

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 319 of 1999

with

Civil Application No. 5966 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
-1 to 5 - No

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NOGHAN RAM

Versus

NATWARSINH VAJUBHAI PARMAR

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Appearance:

MR PJ KANABAR for appellant

MR IM PANDYA for Respondent

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/07/1999

ORAL JUDGEMENT

1. In this Appeal from Order appellant herein has brought in challenge the order dated 1.5.1999 recorded below application Ex.5 in Special Civil Suit No. 41 of 1998 by the learned Civil Judge (S.D.), Amreli, whereby he has dismissed the application Ex.5 submitted by the appellant seeking relief of injunction against the respondent with respect to the suit property -

agricultural land bearing S.No. 23 of village Sugala, Taluka Kodinar, District Amreli, alleging that the agreement to sell with respect to the suit property was executed by the respondent.

Present appellant is the original plaintiff while respondent is the original defendant. For the sake of convenience the parties are hereinafter called as 'plaintiff' and 'defendant' respectively.

2. The suit in question was filed by the plaintiff on the basis of the agreement to sell dated 28.11.1988 executed by the defendant in favour of the plaintiff for selling the suit land in consideration of the amount mentioned therein. As per the terms and conditions of the agreement, the plaintiff has also paid an amount of Rs.25,000/- as earnest money and Rs.1,72,922/- to Kodinar Cooperative Society since the defendant has created incumbrance upon the suit property. It was alleged that now the defendant is not intending to execute the sale deed by virtue of the agreement to sell and is trying to dispose of the suit property in favour of Ambuja Cement Company Limited. Therefore suit was filed for specific performance of the contract and perpetual injunction was also sought.

2.1. Along with the suit, application Ex.5 was also moved which was dismissed by the learned trial Judge on the grounds stated in the impugned order. Aggrieved by the said order, the plaintiff has preferred this Appeal from Order.

3. At the time of presentation of the appeal, this Court has granted ad-interim injunction restraining the defendant from transferring or alienating the suit property till hearing of the Civil Application.

4. Today the matter was listed for hearing of the civil application. After hearing learned advocates for both the parties and having perused the impugned order recorded by the learned trial Judge and also in the facts emerging from the record of the case, this Court opined that the Appeal from Order is required to be allowed by granting injunction till decision of the suit.

5. Since this court has shown inclination to allow the Appeal from Order by quashing and setting aside the impugned order, learned advocate Mr. Pandya for the respondent submitted that reasoned order need not be passed while allowing this Appeal. In view of the aforesaid request of learned advocate Mr. Pandya, this

Court is refrained from recording reasoned order while allowing this Appeal from Order.

6. In the net result, without assigning any reason, this Appeal from Order is allowed. However, with no order as to costs. Consequently, the order below Ex.5 recorded by the learned trial Judge dismissing the application is hereby quashed and set aside and the application Ex.5 is hereby allowed by granting the reliefs as prayed for in the application. Resultantly, defendant is restrained from transferring or alienating the suit property till disposal of the suit.

7. However, in view of the facts and circumstances of the case, learned trial Judge is directed to give expeditious hearing of the suit and try to dispose of the suit, as early as possible, and preferably within one year hereof. The learned trial Judge shall decide the suit on the basis of the evidence that may be adduced and produced before him, in accordance with law, on merits, uninfluenced by the order recorded by this Court granting injunction in favour of the plaintiff till decision of the suit.

8. In view of the order passed in the Appeal from Order, no order on Civil Application.

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(karan)